IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE THIRTEENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 17298 of 2002

Between:

Mohd. Tazuddin, S/o Late Mohd. Khasim Mutawalli of Darga Sonde Shaeed, Khammam

..... PETITIONER

AND

1 The Andhra Pradesh Wakf Board, rep. by its Chief Executive Officer, Nampally, Hyderabad.
2 The District Revenue Officer/ District Wakf Officer, Khammam District. Khammam
3 The Inspector of Wakf Khammam District, Khammam
4 Sk. Jani S/o Lalahamad, Wakf Board Chairman, Khammam.
5 Sk. Madar, S/o Sondhu, Moti Masid, Khammam.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, order or direction, preferably in the nature of Writ of Mandamus, declaring the action of the 1st respondent in not granting the Mutawalli certificate even though petitioner is fully entitled for the same and further action of the 2nd and 3rd respondents in harassing the petitioner by interfering the with the petitioner's management of the Darga Sonde Shaeed properties situated in Survey Nos. 86, 87, 88 & 90 of Khammam, as illegal, arbitrary, violative of Article 14, 19 & 21 of Constitution of India and consequently direct the 1st respondent to issue Mutawalli certificate to the petitioner forthwith by furthe directing the 2nd and 3rd respondents herein not to harass and interfere with the petitioner's management of the above stated Darga properties.

Counsel for the Petitioner: MR.K.RATHANGA PANI REDDY

Counsel for the Respondent Nos.1 to 3: Mr.A.M.QURESHI

Counsel for Respondent Nos.4 and 5: **MR.KOWTURU VINAYA KUMAR**

The Court made the following:

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.17298 OF 2002

ORDER:

Darga Sonde Shaeed, Khammam is a notified wakf as per the gazette notification published under Section 5(1) of the Wakf Act, 1954. Darga and graveyard are situated in Survey No.89 and the lands in Survey Nos.86, 87, 88 and 90 of Khammam admeasuring about Acs.6.00 is endowed to the wakf. As per the gazette notification, Md.Khasim, S/o Shaik Budhan, was the Muthawali. He died on 25.10.1969. The petitioner alleges that after the death of his father, he was discharging the functions as Muthawali of the Darga. Be that as it is, he made a representation on 22.10.1985 to the first respondent to recognize him as Muthawali.

After considering the representation made by the petitioner, the Chairman of the first respondent vide proceedings No.354/W1/Tel.II/KHM/85 dated 28.11.1987, passed the following order.

In the circumstance stated by the applicant in the reference 1st cited the Hon'ble Chairman, A.P.State Wakf Board has been pleased to consider the request made by Shri.Mohd.Tajuddin to develop the wakf properties by constructing shops around the Dargah and Graveyard and in order to fill up the gap and in order to make stop gap arrangement Shri.Mohd.Tajuddin, S.i.Mohd.Khaseem is hereby appointed to act as Mutawalli of Dargah Hzt. Sondha Shaheed, U/s.42 of Wakf Act, 1954 under the following conditions subject to ratification by the Board.

1. He should contest the cases for the recovery of the property attached to the Dargah and to bring out development schemes and to improve to Dargah and the Mosque.

2. He should Act and follow the direction of the Wakf Board issued to him from time to time and he has to fulfil the sections 31, 32, 33 of the Wakf Act, 1954.

The petitioner thereafter allegedly made number of representations to issue a certificate in his favour under Section 63 of Wakf Act, 1995 recognising/appointing him as Muthawali of the subject Darga, in vain. Therefore, he filed the present writ petition praying for writ of Mandamus directing the first respondent to issue appropriate certificate in his favour.

A counter affidavit was filed by the first respondent. It is not denied that the petitioner was appointed to act as Muthawali by proceedings dated 28.11.1987. It is, however, stated that the said proceedings were impugned before this Court in W.P.No.19226 of 1987 and this Court allowed the said writ petition observing that the proceedings of the Chairman dated 28.11.1987 are not valid. It is also averred that Muthawali is appointed by the wakf after considering the claims of all eligible persons and the rule of succession claimed by the petitioner does not confer any right on the petitioner. The right of the petitioner, therefore, is questioned and it is further alleged that the petitioner is a land grabber who encroached upon the land of the institution and disposed of the property illegally.

This Court admitted the writ petition and passed interim orders on 04.10.2002. Respondents 4 and 5, who were impleaded subsequently, moved this Court for vacating the interim order. As the controversy is in a narrow compass, the matter itself was heard finally and is being disposed of.

The order/proceedings passed by the chairman on 28.11.1987 permitting the petitioner to develop the wakf properties by constructing shops around Darga and graveyard was set aside by this Court in W.P.19226 of 1987 dated 31.01.1989. Therefore, the petitioner cannot claim any right by reason of the said proceedings. In such an event, the petitioner cannot be said to have any right that can be enforced in these proceedings under Article 226 of the Constitution of India. The petitioner is admittedly the son of erstwhile Muthawali and therefore he may have a legitimate expectation of being considered for appointment as Muthawali under Section 63 of the Wakf Act, 1995. This power is conferred on the Wakf Board and therefore the petitioner may again approach the first respondent staking a claim for Muthawaliship. As and when such an application is filed within a period of one week from today, the same may be considered by the first respondent in accordance with law within four weeks thereafter. Till then, in view of the allegations made by the petitioner, it would be appropriate to direct the petitioner and other rivals to maintain *status quo* with regard to the religious functions attached to the Darga and also the properties endowed to the wakf.

The writ petition, with the above observations and directions, is disposed of.

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(V.V.S.RAO,J)

14.06.2005.

pln

Note: Issue certified copy by 17.06.2005.

(By order)

pln

To

1 The Chief Executive Officer, Andhra Pradesh Wakf Board, Nampally,

Hyderabad.
2 The District Revenue Officer/ District Wakf Officer, Khammam District.
Khammam.
3 The Inspector of Wakf, Khammam District, Khammam.

4 2CD copies.